From: James E. Leinweber
To: Microsoft ATR
Date: 1/28/02 9:01am
Subject: Microsoft Settlement

[Text body exceeds maximum size of message body (8192 bytes). It has been converted to attachment.]

I am strongly opposed to the proposed settlement in the Microsoft Antitrust case as entirely inadequate and counterproductive, and not in the public interest.

The likely effect of adopting it would be an maintenance of Microsofts current OS, Office suite, and Web browser monopolies, and their extension into new areas. This would give rise to the need for yet a third antitrust case a few years from now. I entirely agree with the criticisms and comments in the "open letter" submitted by Dan Kegel under the Tunney act (see <http://www.kegel.com/remedy/letter.html>, though I am submitting my own additional comments rather than co-signing his.

I have worked in the computer industry for 30 years, including 20 years experience with Unix systems and intensive deployment of Microsoft products since 1993. Though I have no legal training, I have followed the Antitrust case with interest, and have read the Findings of Fact, the Conclusions of Law, the appeals court ruling, and the proposed settlement. I found the facts entirely accurate, and the conclusions persuasive. The appeals court ruling was slightly dissappointing, while the proposed settlement appalls me.

Microsoft's tactic with their first antitrust case, resulting in the consent decree, was to obey the letter of the agreement while completely violating its spirit. That is what led to the current antitrust case. The proposed settlement basically has Microsoft promising not to repeat several of the ploys which entrenched their current monopolies, while doing nothing to reduce those monopolies, and blatantly inviting them to extend their monopolies into new areas.

Tactics Microsoft has used, which have affected me, and which are not addressed by the settlement include:

* Deliberately introducing new API's and abandoning support for old ones, in order to provide a "moving target" too costly for competitors to be compatible with. This imposes extra costs on my organization to convert our own applications to work later versions of Microsofts own software. This has been particularly noticable in the mutation of the Visual Basic interface to Microsoft Office.

* Similarly, use of new secret file formats in their office suite to prevent compatibility with competing products, even their own. When Office-97 was first introduced, it was incapable of writing Office-95 format documents. This tactic forced people to upgrade to new versions in order to be able to read documents from early adopters. My organization had to abandon the use of Wordperfect, which we prefered as a word processor, due to the difficulty of exchanging documents with organizations using Microsoft Word.

* Similarly, their "embrace, extend, extinguish" approach to Internet protocols. This tactic, of designing proprietary additions to widely used protocols is designed to capture control of technologies, which can in turn be used to extend their monopolies and further increase the application barrier to entry as cited in the findings of fact. It was quite notable with their implementation of Java - which they lost a court case over. A more recent example is their introduction of proprietary extensions to Kerberos authentication protocols in Windows-2000. Existing Kerberos clients can authenticate with Microsoft servers, but Microsoft clients cannot usefully authenticate with non-Microsoft servers. They are currently extending this into their Passport service, in an apparent attempt to create a new monopoly in Internet authentication services. These abuses of their monopoly power to pervert interoperability has forced my organization to deploy more Microsoft servers than we would otherwise wish to.

* Gratuitous incompatibilities with competing products. Note that Microsoft lost a private antitrust case with Caldera over this

involving Windows 3.1 and DR-DOS, though the terms of their out of court settlement are secret. In another example, when Microsoft introduced windows NT 4.0, they removed support for the IBM OS/2 "HPFS" filesystem, though the windows NT 3.51 drivers operated perfectly well under windows NT 4.0. Microsoft utilities deliberately reported HPFS file systems as "damaged", when they were not. The continuation of this and similar tactics forced my organization to stop using OS/2 in any significant way.

A particularly blatant and egregious example of this was during 2001, when - while waiting for the appeals court to finish its antitrust ruling! - Microsoft (1) removed Sun-compatible Java from windows-XP (2) broke compability of Netscape browser plugins with Internet Explorer 5.5 via service pack 2, without even the excuse of a new browser internal architecture (3) broke compatibility with Apple Quicktime multimedia, which competes with Windows Media player. If that is their behavior while under court scrutiny, one can scarely imagine what they might do after the settlement.

* raised prices on older OS's which had competition, such as DOS and Windows 3.1, above the price of newer OS's which did not yet have competition, such as Windows-95. In a competitive market they would not have been able to do that, and this abuse of their monopoly position was a deliberate tactic to rapidly move the installed base of systems toward an increased application barrier of entry. This contributed significantly to the extension of their OS monopoly into the office suite arena. It raised the cost of deploying PC's in my organization, as we opted not to deploy windows-95 to any significant degree.

Having destroyed most of the commercial competition already, the next big threat to their monopoly position may be from open source projects such as Linux. The proposed settlement creates several new possible obstacles to the prospect of open source competition, as described in Dan Kegel's letter. The loophole that security-related protocols do not have to be disclosed is particularly glaring.

This secrecy is a bad security practice - ask anyone at the National Institute of Standards and Technology who was involved the exemplary and open development of the Advanced Encryption Standard (AES or Rijndael) currently replacing the obsolete 1970's Data Encryption Standard (DES). In addition to being a bad security practice by a vendor whose monopoly position in the industry makes their security weaknesses a matter of national security interest, it is anticompetitive. Ask anyone on the team of the "Samba" project which tries to provide file sharing and printing services on Unix systems compatible with Microsoft file and print sharing about the difficulties which Microsoft's changes in unpublished security protocols have created.

* Deliberately dropping support for older software to force users to upgrade to newer software. For example, Microsoft is no longer providing security fixes for Internet Explorer 4.0, in the hope of forcing users onto later versions which are more incompatible with their competitors. This summer they will stop providing fixes for NT 4.0. My organization is still running IE 4.0 on NT 4.0, but we will be forced to upgrade this year by this tactic.

Furthermore, Microsoft next ploy seems to be attempting to use the Digital Millenium Copyright Act, the antitrust settlement itself, and the California pricing case to extend its monopolies further and prevent competition from open source projects. Accordingly, I suggest that the proposed settlement be significant extended to include measures such as:

a) Microsoft has to publish all API's and file formats in their final form 6 months before any product using them is first sold.

b) All contract terms have to be published, and they may not sign exclusive contracts with one vendor whose terms are not available to other vendors.

c) depositions and settlement details from other antitrust cases may not be held secret, in order to allow collaboration between the various victims of their monopoly.

d) Microsoft cannot sue open source projects for infringement of patents or trade secrets. Copyright suits against open source projects would be limited to copying of code or documentation; they could not sue over API's nor programming languages.

e) intellectual property such as patents must be licensed on equal and generous terms to all commercial firms.

f) Microsoft may not sue anyone for violation of patents which affect Internet Standards adopted by the Internet Engineering Task Force (IETF).

g) Microsoft may not raise prices on previous products faster than rate of inflation, nor price new versions below old versions

h) Microsoft must provide security fixes for older versions of products for 7 years from the date of first retail sales.

i) under ongoing court supervision, violation of these terms is punished by fines of 1 million dollars per day per product until the violation is remedied.

I don't know if the antitrust laws permit it, but a fitting response to Microsofts abuse of monopoly power to crush competition and extort excess profits would be to impose a large fine, perhaps as high as 10 billion dollars, and then use it to finance open source projects under a BSD-style license. The results would be equally available for commercial or public use, or even by Microsoft itself. The public and government would benefit from the resulting freely available software, while commercial competitors of Microsoft who bid to provide it would benefit from the revenue, the base of code, and the experience of writing it.

Sincerely,

James E. Leinweber
Information Systems Specialist
Wisconsin State Laboratory of Hygiene
University of Wisconsin
465 Henry Mall
Madison WI 53706